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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

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FILE: [Redacted]  
MSC-05-014-19300

Office: NEWARK

Date:

APR 23 2008

IN RE: Applicant: [Redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Newark. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant failed to establish his eligibility for temporary resident status. Specifically, the director stated that the applicant failed to provide credible evidence that he resided unlawfully in the United States throughout the requisite period. The director erroneously stated that the applicant failed to provide credible evidence that he resided unlawfully in the United States continuously since before January 1, 1982 through May 4, 1988, instead of from before January 1, 1982 until the date he attempted to file an application for temporary resident status. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

It is noted that the director raised the issue of class membership in the decision. Since the director considered the application on the merits, she is found not to have denied the applicant's claim of class membership.

On appeal, counsel for the applicant stated that the director failed to provide reasons for denial, and that the decision is general and only states that the applicant has not proven eligibility. The applicant submitted several letters and affidavits to prove his residency in the United States prior to January 1, 1982. Counsel stated that a detailed brief would be submitted within 30 days of filing the appeal. The AAO contacted counsel on March 19, 2008 and requested that counsel provide a copy of the brief. Although nearly two years have passed since the appeal was filed, a brief was never submitted. Therefore, the record will be considered complete.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 15, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period:

[REDACTED] Flushing, New York from September 1981 to December 1981; and [REDACTED] Flushing, New York from January 1985 to December 1989. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Kitchen helper for "Pax Gournet [sic] Deli" from November 1981 to December 1984; and construction worker for Popular Construction from January 1985 to December 1991.

In an attempt to establish continuous unlawful residence in the United States during the requisite period, the applicant provided numerous documents. Documents relating to the requisite period include the applicant's Personal Earnings and Benefit Estimate Statement from the Social Security Administration (Personal Earnings Statement), documentation of the applicant's travel, and several attestations. The Personal Earnings Statement indicates that earnings for the applicant were first reported to the Social Security Administration in 1993. This document tends to indicate that the applicant began residing in the United States in 1993, and casts some doubt on his claim to have resided in the United States throughout the requisite period.

The applicant provided a letter from [REDACTED], office manager of Imperial Agency Inc. This letter indicates that the applicant departed on September 5, 1987 from John F. Kennedy International Airport in New York to Montreal Canada. This document tends to indicate that the applicant was present in the United States on September 5, 1987.

The applicant provided a notarized declaration from [REDACTED] which states applicant was living with the declarant from September 1981 to December 1984. The 1 [REDACTED] address is printed at the top of the declaration. This declaration fails to include detail regarding how and when the declarant met the applicant, how they came to be living together, and whether the applicant was absent from the United States during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED], which states that the applicant was working "under [sic] Popular Construction Inc." on an irregular basis from January 1985 to December 1991 as a construction worker. It is noted that the affidavit appears to have been altered to read "December 1991." The alteration of the original affidavit, unaccompanied by the affiant's initials authorizing the change, casts some doubt on the authenticity of the affidavit. In addition, this affidavit fails to conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records,

where the records are located, and whether CIS may have access to the records. Therefore, this affidavit will be given very little weight.

The applicant provided a notarized declaration from [REDACTED] which states that the declarant has known the applicant since 1983. The declarant stated that the applicant has worked for the declarant on occasion as a handy man and as a gardener. This declaration fails to specifically state that the applicant resided in the United States during the requisite period.

The applicant provided a notarized declaration from [REDACTED] which states that the declarant has known the applicant since 1982. The declarant stated that the applicant has worked on construction in her home. This declaration also fails to specifically state that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] which states that the affiant has known the applicant since May 1981 when the applicant came to the United States. The affiant stated that the applicant lived with the affiant for about four months from May 1981 to August 1981 because the applicant was a family friend of the affiant and was known to him from Pakistan. The affiant stated that he lived in Trenton, New Jersey in 1981. This affidavit is inconsistent with the applicant's Form I-687, which fails to indicate that the applicant resided in the United States prior to November 1981. This inconsistency calls into question the applicant's claim to have resided in the United States prior to January 1, 1982.

The applicant submitted an affidavit from [REDACTED] which states that the affiant has known the applicant since 1982 when the applicant did some construction work on the affiant's mother's house. The affiant stated that, since 1982, she has met the applicant on several occasions. The affiant also stated that she confirms that the applicant was in the United States in 1982. This affidavit fails to state that the applicant resided in the United States during the requisite period, and it fails to state that the applicant was present in the United States at any time other than in 1982. This affidavit also fails to provide detail regarding where the applicant resided during the requisite period, whether he was absent from the United States during the requisite period, and the affiant's frequency of contact with the applicant during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant failed to establish his eligibility for temporary resident status. Specifically, the director stated that the applicant failed to provide credible evidence that he resided unlawfully in the United States throughout the requisite period.

On appeal, counsel for the applicant stated that the director failed to provide reasons for denial, and that the decision is general and only states that the applicant has not proven eligibility.

In summary, the applicant has provided contemporaneous evidence that tends to indicate he did not begin residing in the United States until 1993, or indicates that he was present in the United

States on one day in September 1987. The applicant provided attestations that lack sufficient detail, fail to conform to regulatory standards, fail to state that the applicant resided in the United States during the requisite period, or are inconsistent with the applicant's Form I-687.

The declaration from [REDACTED] and the affidavit from [REDACTED] lack sufficient detail. The affidavit from [REDACTED] fails to conform to regulatory standards. The declarations from [REDACTED] and [REDACTED] fail to state that the applicant resided in the United States during the requisite period. The affidavit from [REDACTED] is inconsistent with the applicant's Form I-687.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the contradictions between the applicant's statements on his Form I-687 application and other documents he submitted, and given his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.